IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 29639 of 2007(C)

PETITIONER:

K.KAMALAKSHY, PROPRIETRIX, KAMALA FUELS
BPC DEALER, AYANIMOODU, POTHENCODE PO,
TRIVANDRUM.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:

---

1. THE ASSISTANT CONTROLLER, LEGAL METROLOGY, (FLYING SQUAD), TRIVANDRUM.

2. THE ASSISTANT CONTROLLER OF LEGAL METROLOGY, TRIVANDRUM.

BY GOVT. PLEADER MR. I.V. PRAMOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

= = = = = = = = = = = = = = = = =
W.P.(C) No. 29639 OF 2007 C
= = = = = = = = = = = = = = = = =

Dated this the 16th October, 2007

J U D G M E N T

Petitioner is a dealer of Bharath Petroleum Corporation Limited. Dispensing units of the petitioner's outlet were stamped on 11-1-2007 and 25-5-2007, the validity period of which is one year from the date of stamping. Subsequently the respondents noted erratic delivery and issued Ext. P1 intimating the petitioner that the variation was beyond the tolerance limits and requiring that the sales through the two dispensing units be stopped forthwith. However, in Ext. P1 memo, there is no allegation that the seals put by the respondents at the time of stamping were tampered with.

2. As the dispensing units were not re-stamped by the respondents, petitioner requested for its re-stamping by Exts. P2 and P3. It did not yield any result and thereupon this writ petition was filed for a direction to the respondents to re-stamp the dispensing units mentioned in Ext. P1 memo dated 13-9-2007.

Petitioner is also relying on the judgment of this Court in O.P. No. 16992 of 2000 and W.A. Nos. 3666 of 2001 and 3674 of 2001. According to the petitioner in terms of the aforesaid judgments, in the absence of any allegation of tampering the respondents are bound to re-stamp the dispensing units within seven days of noticing such variation.

3. First respondent has filed a counter affidavit in which it is stated that on 13-9-2007 in a surprise inspection, one unit used for petrol dispensing and another unit used for diesel vending were found to have variation beyond tolerance limits and it was accordingly that Ext. P1 memo was issued. They would contend that the variation noticed, amounted to an offence under the Standards of Weights and Measures (Enforcement) Act, 1985 (hereinafter referred to as the 'Act' for short) and that the petitioner is liable to be prosecuted under Section 39 of the said Act. They rely on Ext. R1(a) judgment in W.P.(C) No. 28009 of 2004 and contend that unless the petitioner compounds the offence, the department is not liable to re-stamp the dispensing units. They have already filed an

inspection report before the Judicial Ist Class Magistrate, Attingal and would state that in terms of the provisions of the Act, prosecution is to be launched within six months of commission of offence.

4. Thus the contention of the petitioner is that the respondents ought to have re-stamped the dispensing units as held in the judgments relied on by her. While on the other hand respondents would contend that the variation noticed makes out an offence under the Act, and that unless the petitioner compounds the offence, the petitioner is liable to be prosecuted in a criminal court. In view of this they argue that they have no liability to re-stamp the equipment at this stage.

5. The fact that the aforesaid Act and the Rules framed thereunder are applicable to the dispensing units in question is not disputed by the petitioner. Petitioner also does not dispute the variation noticed by the respondents and mentioned in Ext. P1 memo. Therefore, if the variation noticed by itself makes out an offence warranting prosecution of the petitioner in terms of the provisions of the Act, the respondents are entitled to proceed with such prosecution. Further,

neither in the counter affidavit nor in Ext. P1 memo issued by them, is there any allegation that the seals put by the respondents at the time of stamping, have been tampered with in any manner. Therefore, if the facts in question disclose an offence under Section 39, the respondents are at liberty to proceed with such action. In the absence of any dispute regarding the variation noticed and as there is no allegation of tampering of the seals, there is no necessity of treating the dispensing units in question as material objects in the criminal case. Thus, even if the dispensing units are stamped as directed by this Court in the judgments relied on by the petitioner that is not going to affect the prosecution that the respondents might launch against the petitioner. In Ext. P4 judgment, taking into account the undisputed statement that dispensing unit may vary even after sealing this Court directed that if the petitioners are willing to make remittance of the fees prescribed in that behalf, the respondents therein shall stamp the equipment within three days of noticing the variation. Against Ext. P4 judgment W.A. No. 3666 of 2001 filed by

the respondents therein was disposed of by judgment dated 4-10-2005 wherein this Court upheld the direction of the learned Single Judge and directed that re-stamping shall be done in cases other than those involving cases of tampering of dispensing units within seven days of noticing such variation.

6. Since in this case there is no dispute regarding the allegation of the variation noticed by the respondents and as there is no allegation of tampering of the seals, there is no reason for the respondents to deny re-stamping the dispensing units of the petitioner. In so far as the judgment of the learned Single Judge in W.P.(C) No. 28009 of 2004 relied on by the respondents is concerned, it is seen that the Division Bench judgment was not brought to the notice of the learned Single Judge. That apart, the learned Judge was concerned about the consequences of such re-stamping in the event of a prosecution being launched against the petitioner therein. In this case in view of the facts as noticed hereinabove, I find that even if the re-stamping is done that is not going to prejudicially affect the prosecution. Therefore,

the ratio laid down by the learned Single Judge in W.P. (C) No. 28009/04 is inapplicable to the facts of this case.

In view of what has been stated above I dispose of this writ petition directing the respondents to re-stamp the dispensing units of the petitioner's outlet mentioned in Ext. P1 as expeditiously as possible, at any rate within 7 days of receipt of a copy of this judgment.

ANTONY DOMINIC
JUDGE

jan/-